

REMARKS

Claims 1 to 97 are the pending claims being examined in the application, of which Claims 1, 34, 39, 59 and 93 are independent. Reconsideration and further examination are respectfully requested.

Claims 1, 4 to 27, 32, 33, 39, 42 to 59, 62 to 85, 91 and 92 are rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 6,438,579 (Hosken), and Claims 2, 3, 28 to 31, 34 to 38, 40, 41, 60, 61, 86 to 90 and 93 to 97 are rejected under 35 U.S.C. § 103(a) over Hosken and U.S. Patent No. 6,438,539 (Lazarus).

The Applicants respectfully request confirmation that the 35 U.S.C. § 102(e) rejection of Claims 1, 4 to 27, 32, 33, 39, 42 to 59, 62 to 85, 91 and 92 over Hosken has been withdrawn by the Examiner. In addition, the Applicants respectfully request clarification as to the status of Claims 39, 46 to 59, 73 to 85, 91 and 92, and whether these claims stand rejected under 35 U.S.C. § 103(a), as the Office Action does not present any specific grounds for rejection of these claims.

The Applicant respectfully submits that there has never been a showing to establish that Hosken '579 is prior art to the present application. In order for Hosken '579 to be prior art, there must be a showing that Hosken '579 is entitled to the filing date of Hosken '377. The necessary showing is set forth in MPEP § 2136.03(III), which states in relevant part:

“[t]he 35 U.S.C. 102(e) critical reference date of a U.S. patent or U.S. application publications and certain international application publications entitled to the benefit of the filing date of a provisional application under 35 U.S.C. 119(e) is the filing date of the provisional application with certain exceptions > **if** the provisional application(s) properly supports the

subject matter relied upon to make the rejection in compliance with 35 U.S.C. 112, first paragraph.<” (Emphasis in original.)

The first paragraph of 35 U.S.C. 112 referenced in MPEP § 2136.03(III) states:

[t]he specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.”

The record is clear that Hosken ‘579 was filed after the filing date of the present application, and that Hosken ‘579 can only be prior art if it is entitled to the benefit of the filing date of U.S. Provisional Application No. 60/144,377 (Hosken ‘377). As can be seen from the above-quoted authority, Hosken ‘579, and the portions of Hosken ‘579 relied upon to reject the claims of the present application, can only be entitled to the filing date of Hosken ‘377 if Hosken ‘377 provides § 112, first paragraph support, i.e., support which satisfies the written description, enablement and best mode requirements, for the portions of Hosken ‘579 relied upon to reject the claims of the present application. Without such a showing, Hosken ‘579 cannot be prior art to the claims of the present application.

For the Examiner’s convenience, the following tables identify the portions of Hosken ‘579 that the Examiner has relied upon to reject the claims of the present application. Should the Examiner persist in her reliance on Hosken ‘579 to reject the claims, the Applicants respectfully request the Examiner to use these tables to identify the portions of Hosken ‘377 which provide the 35 U.S.C. § 112, first paragraph support for each portion of Hosken ‘579 relied upon, in accordance with MPEP § 2136.03(III).

I. Claim 1

Portion of Hosken '579 Relied Upon in the Office Action	Portion of Hosken '377 Providing § 112, First Paragraph Support
Abstract	
Figures 7A to 7C	
Col. 2, line 52 to col. 3, line 34	
Col. 3, lines 16 to 33	
Col. 4, lines 44 to 67	
Col. 5, line 8 to col. 6, line 38	
Col. 9, lines 23 to 65	
Col. 14, lines 13 to 20	

II. Claims 4 to 11, 42 to 45 and 62 to 69

Portion of Hosken '579 Relied Upon in the Office Action	Portion of Hosken '377 Providing § 112, First Paragraph Support
Abstract	
Col. 11, line 1 to col. 13, line 30	
Col. 14, line 40 to col. 16, line 21	

III. Claims 12, 13, 70 and 71

Portion of Hosken '579 Relied Upon in the Office Action	Portion of Hosken '377 Providing § 112, First Paragraph Support
Col. 3, lines 17 to 34	
Col. 4, lines 11 to 55	
Col. 5, lines 20 to 62	

IV. Claims 14 and 72

Portion of Hosken '579 Relied Upon in the Office Action	Portion of Hosken '377 Providing § 112, First Paragraph Support
Col. 15, line 10 to col. 16, line 21	

V. Claims 15 to 27

Portion of Hosken '579 Relied Upon in the Office Action	Portion of Hosken '377 Providing § 112, First Paragraph Support
Col. 5, line 20 to col. 6, line 67	
Col. 8, line 38 to col. 11, line 19	

VI. Claims 32 and 33

Portion of Hosken '579 Relied Upon in the Office Action	Portion of Hosken '377 Providing § 112, First Paragraph Support
Col. 16, lines 24 to 53	

VII. Claims 28 to 31, 34 to 38, 87 to 90 and 93 to 97

Portion of Hosken '579 Relied Upon in the Office Action	Portion of Hosken '377 Providing § 112, First Paragraph Support
Figure 2, reference nos. 70, 68 and 64	
Col. 14, lines 13 to 20	
Col. 15, line 10 to col. 16, line 21	

Should matters remain which the Examiner believes could be resolved in a telephone interview, the Examiner is requested to telephone the Applicants' undersigned attorney.

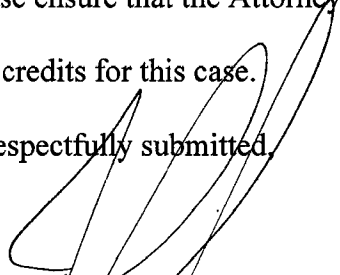
Alternatively, since it is believed that the claims of the present application are in condition for allowance, the Examiner is respectfully requested to issue a Notice of Allowance at the Examiner's earliest convenience.

The Applicants' attorney may be reached by telephone at 212-801-6729. All correspondence should continue to be directed to the address given below, which is the address associated with Customer Number 32361.

The Commissioner is hereby authorized to charge any required fee in connection with the submission of this paper, any additional fees which may be required, now or in the future, or credit any overpayment to Account No. 50-1561. Please ensure that the Attorney Docket Number is referenced when charging any payments or credits for this case.

Respectfully submitted,

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